



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord: MND, MNR, MNDC, MNSD, FF

Tenant: MNSD, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord filed their application on February 07, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for Unpaid rent – section 67
3. A monetary Order to keep the security/pet damage deposit(s) – Section 38
4. An Order to recover the filing fee for this application - Section 72.

The tenant filed their application on May 09, 2014 for Orders as follows;

1. An Order for return of security/pet damage deposit(s) - Section 38
2. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to settle their dispute, discuss their dispute, present *relevant* evidence before and during the hearing, respond to the evidence of the other, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The tenant was assisted by 2 individuals of her choice. The tenant acknowledged receiving all the evidence of the landlord in February 2014. They further acknowledged they did not serve their evidence to the landlord within 5 days before the hearing as per the Rules for serving evidence to the other party, therefore I determined their evidence inadmissible, although the tenant had opportunity to present testimonial evidence during the hearing. The parties were apprised that only *relevant* evidence would be considered in the Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

It must be noted that each party bears the burden of proving their respective claims.

### **Background and Evidence**

The parties provided sworn evidence under affirmation. The undisputed relevant evidence in this matter is as follows. The tenancy ended when the tenant vacated January 15, 2014 subsequent to their Notice to End the tenancy of January 08, 2014. The tenancy started February 15, 2013 as a written fixed term tenancy with an end date of February 28, 2014. The hearing had benefit of the written Tenancy Agreement. During the tenancy the payable rent was in the amount of \$2100.00 due in advance, "*on the first day of the rental period falling on the 1 st. day of each month*". Despite the conflicting document evidence provided by both parties on the matter of the security and pet damage deposits, the parties were canvassed several times and each repeatedly confirmed in testimony that at the outset of the tenancy the landlord collected a security deposit in the amount of \$1050.50 and an equal amount as a pet damage deposit, all of which the landlord retains in trust in the sum of \$2100.00.

The parties disagree on whether there was a *move in* inspection at the start of the tenancy, however, the hearing did not have benefit of the requisite *move in* Condition Inspection Report (CIR). The parties disagree on the existence of a *move out* inspection at the end of the tenancy; however, the hearing did not have benefit of the requisite *move out* CIR. Regardless, the parties agree there was no mutual determination as to the administration of the two deposits at the end of the tenancy.

#### **Tenant's application**

The tenant did not agree to any deductions from the deposits at the end of the tenancy. The landlord acknowledges receiving the tenant's written forwarding address after March 03, 2014: the date the tenant states they sent their forwarding address in writing. The tenant seeks compensation pursuant to Section 38 of the Act for *double* the deposits held as the landlord did not return the deposits within 15 days of them vacating the rental unit. The tenant also testified that they moved from the rental unit because their children were experiencing ongoing difficulty emotionally dealing with a burglary of the rental unit months earlier. The tenant provided the landlord with this reason in writing as their primary reason for vacating the unit the month prior to the end of the fixed term of the tenancy agreement. The letter containing the reasons was dated January 23, 2014 and stated it was accompanied by the key of the rental unit. The hearing had benefit of the letter and it was highlighted that the landlord's application was filed within 15 days after the date of the letter and return of the key. The balance of the tenant's testimony was in rebuttal of the landlord's claims.

Landlord's application

The landlord seeks the unpaid rent for February 2014 to the end of the fixed term as stated in the tenancy agreement: February 28, 2014. The tenant argued that I should determine the end of the fixed term of the agreement as February 14, 2014 because the agreement was started February 15, 2013 and it states the *length of time* as 1 year – thereby ending February 14, 2014. The parties agree the tenant paid the balance of February 2013 rent and accepted that the monthly rental period was from the 1 st. of each month thereafter. Regardless, the tenant testified they did not satisfy the rent for the first half of February 2014 – as to their version of the end of the tenancy agreement.

The landlord claims the tenant left the rental unit unclean and with some damage. The landlord provided a series of photographs of the rental unit which they claim were taken in his presence by someone else, but that they are of the rental unit as left at the end of the tenancy. The tenant disputes the landlord's photographs as fraudulent: purportedly from "a previous tenancy" and in complete contrast to how the rental unit was left by the tenant: clean and undamaged. The tenant testified they were not present at the time the photographs were purportedly taken and that they do not appear to be of the rental unit with which they are familiar. The hearing did not have benefit of the individual purported to have taken the photographs.

The landlord presented and described that a toilet seat was new at the start of the tenancy and now depicted in a photograph as stained and pitted on its underside – for which the landlord claimed \$20.13 supported by a receipt. The tenant disputes the claim.

The landlord presented and described that several sink strainers, a bathroom towel bar and a tub stopper were provided at the start of the tenancy and now depicted as incomplete, missing and missing, respectively – for which the landlord claimed \$90.01 supported by a receipt. The tenant disputes all but the cost of a threaded tub stopper in the amount of \$17.14 inclusive of tax. The tenant acknowledged the towel bar was left unattached and could have been re-attached.

The landlord presented and described that some of the rental unit walls were marked and damaged, in contrast to their condition at the start of the tenancy – for which the landlord claimed \$200.00 as charged by an acquaintance although unsupported by the acquaintance, or a receipt. The tenant disputes the claim as being fraudulent.

The landlord presented and described that the rental unit was left unclean: with visible dirt, dust, debris and soiling, including soiling behind and under the refrigerator and stove – for which the landlord claimed \$220.00 supported by a receipt. The tenant disputes the claim as a fabrication of the condition in which the rental unit was left. The tenant testified the unit was left clean throughout. On addressing the landlord's claim that the refrigerator was on rollers, but the area beneath and behind it were not cleaned, the tenant was not responsive to the testimony.

The landlord presented and described that the carpeting of the unit was not cleaned professionally at the end of the tenancy as agreed within the Addendum of the tenancy Agreement - for which the landlord claimed \$156.45 supported by a receipt. The tenant did not dispute this claim once addressed in the hearing.

### **Analysis**

A copy of the Residential Tenancy Act, Regulations and other publications are available at: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca).

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

#### **Tenant's claim**

**Section 38(1)** of the Act provides as follows (emphasis added):

**38(1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

and

**38(6)** If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that **Section 37** of the Act states that when a tenant vacates a rental unit they must give the landlord all the keys or other means of access of the unit. I find that effectively a rental unit remains in the possession of the tenant until they return the key to the unit. I find that the tenant returned the key for the unit on January 23, 2014, and the landlord made their application within 15 days after the end of the tenancy. As well, the tenant provided their written forwarding address March 03, 2014. Together, I find that the tenant has not established entitlement to double the amount of their original deposits. As a result, I **dismiss** the tenant's application. The tenant's original deposits, held in trust, will be offset as appropriate.

#### Landlord's claim

Under the Act, a party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In relevance to this matter, the test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant (landlord) followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to *mitigate or minimize* the loss incurred.

Specifically, a tenant, who signs a fixed-term tenancy agreement – effectively a contract - is responsible for the rent to the end of the fixed-term. And, a landlord who claims for a loss is subject to their statutory duty pursuant to **Section 7(2)** of the Act to do what is *reasonable to minimize the loss*. In this matter I find that despite the use of the wording of “1 Year” to define the fixed term of the tenancy agreement, as the rent was payable on the 1 st. day of each rental period (a month) I accept February 2014 as the last rental period of the fixed term to its end on February 28, 2014. I find that the tenant’s failure to satisfy any portion of February 2014 rent an indication the tenant did not consider any portion of February 2014 formed an obligation of rent under the fixed term of the agreement. While I understand the tenant’s reason for ending the tenancy I find they provided this reason to the landlord as an after-thought subsequent to their departure from the rental unit. The tenant has not provided sufficient evidence the landlord failed to comply with a material term of the tenancy agreement, which then *may* have allowed them to legally end the fixed term tenancy.

I accept that given the date of the Notice to End, and that it stated the tenants would be leaving February 08, 2014, I find the landlord’s ability to plan and take steps to mitigate losses for February 2014 was hampered, resulting in an unavoidable loss of rent revenue for the month of February 2014. As a result, I find that the landlord has established a claim of **\$2100.00**, for a loss of revenue to February 28, 2014.

It must be noted that the purpose of a mutual condition inspection, and the requisite Condition Inspection Report, at the start and end of a tenancy is to assist the parties, and if required an Arbitrator, to establish how a security or pet damage deposit should be administered at the end of a tenancy in relation to alleged circumstances beyond reasonable wear and tear, such as a claim for damages including cleaning. The mutual inspections and accompanying reports are intended to avoid the situation the parties find themselves – in almost complete contrast as to the facts. **Section 21** of the Residential Tenancy *Regulations* states;

#### **Evidentiary weight of a condition inspection report**

- 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this matter, I find that the absence of a record of the condition of the rental unit at the start and at the end of the tenancy, combined with the tenant’s disagreement of those deficiencies in dispute, prevents the landlord from establishing the evidentiary weight of their evidence to adequately prove the alleged damage to the unit occurred during the tenancy. As a result, other than what the parties have agreed, I find the landlord has not provided sufficient evidence that the actions or neglect of the tenant were responsible for circumstances beyond reasonable wear and tear – for which a tenant is not responsible. I find the landlord has not provided sufficient evidence, on balance of probabilities, to prove their claim for damages, inclusive of most cleaning. I find the

landlord has provided uncontested evidence by the tenant of entitlement to the cost of cleaning behind and beneath the refrigerator, for which I grant the landlord **\$25.00** for cleaning. **I dismiss** the landlord's claim for damages and the balance of general cleaning, without leave to reapply. I accept the landlord is entitled to carpet cleaning in accordance with the tenancy agreement, and for a threaded tub stopper as agreed by the tenant, in the sum of **\$173.59**. The landlord is further entitled to recover their filing fee.

*Calculation for Monetary Order:*

Landlord's total award	\$2298.59
Landlord's filing fee	\$50.00
<i>less Tenant's original security and pet damage deposit: in trust</i>	- \$2100.00
<b>Monetary Order for landlord</b>	<b>\$248.59</b>

**Conclusion**

**I Order** that the landlord may retain the tenant's deposits in the total of \$2100.00 in partial satisfaction of their claim, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$248.59**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.*

Dated: June 02, 2014

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Residential Tenancy Branch

